

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 1, 2009

**SENATE BILL**

**No. 98**

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**Introduced by Senator Calderon**

January 26, 2009

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An act to amend Section 10110.1 of, to add Sections 10113.3 and 10113.35 to, and to repeal and add Sections 10113.1 and 10113.2 of, the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 98, as amended, Calderon. Life insurance: contracts and viatical settlements.

Existing law establishes when an interest, with respect to life and disability insurance, is insurable.

This bill would provide that trusts and special purpose entities, as specified, where one or more beneficiaries of these trusts or special purpose entities do not have an insurable interest in the life of the insured, violate the insurable interest laws and the prohibition against wagering on life. The bill would also provide that any device, scheme, or artifice designed to give the appearance of an insurable interest, where there is no insurable interest, violates the insurable interest laws.

Existing law defines "viatical settlement," as specified, and requires life and disability agents, among others, to file a declaration with the Insurance Commissioner that their agent license is valid and in good standing in order to engage in the business of viatical settlements. The commissioner may suspend the agent's ability to transact viatical settlements if this requirement is not complied with. A person who enters into or solicits a viatical settlement without a license, or a licensee

who fails to comply with certain requirements, is guilty of a misdemeanor.

This bill would repeal these provisions, and would instead revise and recast the law relating to viatical settlements to define those and other specified financial arrangements as “life settlements,” as defined. The bill would prohibit a person from entering into, brokering, or soliciting life settlements unless that person holds a license, issued by the commissioner, to so act. The bill would specify the requirements to obtain a life settlement license, and specify, among other things, disclosure requirements that must be complied with at the time of the solicitation of the life settlement contract. The bill would also provide that the insurance carrier may require a specified certification from the applicant. The bill would contain various other regulatory provisions relating to life settlement contracts, including provisions relating to the confidentiality of the insured’s medical and financial information, and of the annual statements of life settlement licensees, as specified. This bill would also provide that applicable license fees shall be established by the commissioner. Because the bill would change the definition of a crime, the bill would impose a state-mandated local program.

This bill would provide that the adoption or amendment of any regulation required by specific provisions shall take effect when filed with the Office of Administrative Law, as specified.

This bill would provide that, with certain exceptions, it shall not apply to any life settlement contract entered into on or before July 1, 2010. This bill would provide that it would apply to any transaction involving any life insurance policy in effect, or entered into, on or after the operative date of the bill.

This bill would make legislative findings and declarations relating to the need for confidentiality of specified information.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10110.1 of the Insurance Code is  
2 amended to read:

3     10110.1. (a) An insurable interest, with reference to life and  
4 disability insurance, is an interest based upon a reasonable  
5 expectation of pecuniary advantage through the continued life,  
6 health, or bodily safety of another person and consequent loss by  
7 reason of that person's death or disability or a substantial interest  
8 engendered by love and affection in the case of individuals closely  
9 related by blood or law.

10    (b) An individual has an unlimited insurable interest in his or  
11 her own life, health, and bodily safety and may lawfully take out  
12 a policy of insurance on his or her own life, health, or bodily safety  
13 and have the policy made payable to whomsoever he or she pleases,  
14 regardless of whether the beneficiary designated has an insurable  
15 interest.

16    (c) Except as provided in Section 10110.4, an employer has an  
17 insurable interest, as referred to in subdivision (a), in the life or  
18 physical or mental ability of any of its directors, officers, or  
19 employees or the directors, officers, or employees of any of its  
20 subsidiaries or any other person whose death or physical or mental  
21 disability might cause financial loss to the employer; or, pursuant  
22 to any contractual arrangement with any shareholder concerning  
23 the reacquisition of shares owned by the shareholder at the time  
24 of his or her death or disability, on the life or physical or mental  
25 ability of that shareholder for the purpose of carrying out the  
26 contractual arrangement; or, pursuant to any contract obligating  
27 the employer as part of compensation arrangements or pursuant  
28 to a contract obligating the employer as guarantor or surety, on  
29 the life of the principal obligor. The trustee of an employer or  
30 trustee of a pension, welfare benefit plan, or trust established by  
31 an employer providing life, health, disability, retirement, or similar  
32 benefits to employees and retired employees of the employer or  
33 its affiliates and acting in a fiduciary capacity with respect to those  
34 employees, retired employees, or their dependents or beneficiaries  
35 has an insurable interest in the lives of employees and retired  
36 employees for whom those benefits are to be provided. The  
37 employer shall obtain the written consent of the individual being  
38 insured.

(d) Trusts and special purpose entities that are used to apply for and initiate the issuance of policies of insurance for investors, where one or more beneficiaries of those trusts or special purpose entities do not have an insurable interest in the life of the insured, violate the insurable interest laws and the prohibition against wagering on life.

(e) Any device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws.

(f) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(g) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying for the insurance has an insurable interest in the individual insured at the time of the application.

(h) Notwithstanding subdivisions (a), (f), and (g), a charitable organization that meets the requirements of Section 214 or 23701d of the Revenue and Taxation Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

(i) This section shall not be interpreted to define all instances in which an insurable interest exists.

SEC. 2. Section 10113.1 of the Insurance Code is repealed.

SEC. 3. Section 10113.1 is added to the Insurance Code, to read:

10113.1. The following provisions shall apply to this act:

(a) “Advertisement” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.

(b) “Broker” means a person who, on behalf of an owner, and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner

1 and providers. A broker represents only the owner and owes a  
2 fiduciary duty to the owner to act according to the owner's  
3 instructions, and in the best interest of the owner, notwithstanding  
4 the manner in which the broker is compensated. A broker does not  
5 include an attorney, certified public accountant, or financial planner  
6 retained in the type of practice customarily performed in his or her  
7 professional capacity to represent the owner whose compensation  
8 is not paid directly or indirectly by the provider or any other person,  
9 except the owner.

10 (c) "Business of life settlements" means an activity involved  
11 in, but not limited to, offering to enter into, soliciting, negotiating,  
12 procuring, effectuating, monitoring, or tracking of life settlement  
13 contracts.

14 (d) "Commissioner" means the Insurance Commissioner.

15 (e) "Financing entity" means an underwriter, placement agent,  
16 lender, purchaser of securities, purchaser of a policy or certificate  
17 from a provider, credit enhancer, or any entity that has a direct  
18 ownership in a policy or certificate that is the subject of a life  
19 settlement contract, as to which both of the following apply:

20 (1) It is an entity whose principal activity related to the  
21 transaction is providing funds to effect the life settlement contract  
22 or purchase of one or more policies.

23 (2) It is an entity that has an agreement in writing with one or  
24 more providers to finance the acquisition of life settlement  
25 contracts.

26 (f) "Financing transaction" means a transaction in which a  
27 licensed provider obtains financing from a financing entity,  
28 including, without limitation, any secured or unsecured financing,  
29 any securitization transaction, or any securities offering which  
30 either is registered or exempt from registration under federal and  
31 state securities law.

32 (g) "Fraudulent life settlement act" includes all of the following:

33 (1) Acts or omissions committed by any person that, for the  
34 purpose of depriving another of property or for pecuniary gain,  
35 commits or permits its employees or its agents to engage in acts,  
36 including, but not limited to, the following:

37 (A) Presenting, causing to be presented, or preparing with  
38 knowledge and belief that it will be presented to or by a provider,  
39 premium finance lender, broker, insurer, insurance producer, or  
40 any other person, false material information, or concealing material

- 1 information, as part of, in support of, or concerning a fact material  
2 to one or more of the following:
- 3 (i) An application for the issuance of a life settlement contract  
4 or insurance policy.
  - 5 (ii) The underwriting of a life settlement contract or insurance  
6 policy.
  - 7 (iii) A claim for payment or benefit pursuant to a life settlement  
8 contract or insurance policy.
  - 9 (iv) Premiums paid on an insurance policy.
  - 10 (v) Payments and changes in ownership or beneficiary made in  
11 accordance with the terms of a life settlement contract or insurance  
12 policy.
  - 13 (vi) The reinstatement or conversion of an insurance policy.
  - 14 (vii) The solicitation, offer to enter into, or effectuation of, a  
15 life settlement contract or insurance policy.
  - 16 (viii) The issuance of written evidence of life settlement  
17 contracts or insurance.
  - 18 (ix) Any application for, or the existence of or any payments  
19 related to, a loan secured directly or indirectly by any interest in  
20 a life insurance policy.
- 21 (B) Entering into stranger-originated life insurance (STOLI).
- 22 (C) Employing any device, scheme, or artifice to defraud in the  
23 business of life settlements.
- 24 (2) Any of the following that any person does, or permits his  
25 or her employees or agents to do, in the furtherance of a fraud, or  
26 to prevent the detection of a fraud:
- 27 (A) Remove, conceal, alter, destroy, or sequester from the  
28 commissioner the assets or records of a licensee or other person  
29 engaged in the business of life settlements.
  - 30 (B) Misrepresent or conceal the financial condition of a licensee,  
31 financing entity, insurer, or other person.
  - 32 (C) Transact the business of life settlements in violation of laws  
33 requiring a license, certificate of authority, or other legal authority  
34 for the transaction of the business of life settlements.
  - 35 (D) File with the commissioner or the chief insurance regulatory  
36 official of another jurisdiction a document containing false  
37 information or otherwise concealing information about a material  
38 fact from the commissioner.
  - 39 (E) Engage in embezzlement, theft, misappropriation, or  
40 conversion of moneys, funds, premiums, credits, or other property

1 of a provider, insurer, insured, owner, insurance policyowner, or  
2 any other person engaged in the business of life settlements or  
3 insurance.

4 (F) Enter into, broker, or otherwise deal in a life settlement  
5 contract, the subject of which is a life insurance policy that was  
6 obtained by presenting false information concerning any fact  
7 material to the policy or by concealing, for the purpose of  
8 misleading another, information requested concerning any fact  
9 material to the policy, where the owner or the owner's agent  
10 intended to defraud the policy's issuer.

11 (G) Attempt to commit, assist, aid, or abet in the commission  
12 of, or conspiracy to commit the acts or omissions specified in this  
13 subdivision.

14 (H) Misrepresent the state of residence of an owner to be a state  
15 or jurisdiction that does not have a law substantially similar to this  
16 act for the purpose of evading or avoiding the provisions of this  
17 act.

18 (h) "Insured" means the person covered under the policy being  
19 considered for sale in a life settlement contract.

20 (i) "Life expectancy" means the arithmetic mean of the number  
21 of months the insured under the life insurance policy to be settled  
22 can be expected to live considering medical records and appropriate  
23 experiential data.

24 (j) "Life insurance producer" means any person licensed in this  
25 state as a resident or nonresident insurance agent who has received  
26 qualification or authority for life insurance coverage or a life line  
27 of coverage pursuant to Chapter 5 (commencing with Section  
28 1621) of Part 2 of Division 1.

29 (k) "Life settlement contract" means a written agreement  
30 solicited, negotiated, or entered into in this state between a provider  
31 and an owner, establishing the terms under which compensation  
32 or any thing of value will be paid, which compensation or thing  
33 of value is less than the expected death benefit of the insurance  
34 policy or certificate, in return for the owner's assignment, transfer,  
35 sale, devise, or bequest of the death benefit or any portion of an  
36 insurance policy or certificate of insurance for compensation,  
37 provided, however, that the minimum value for a life settlement  
38 contract shall be greater than a cash surrender value or accelerated  
39 death benefit available at the time of an application for a life  
40 settlement contract. "Life settlement contract" also includes the

1 transfer for compensation or value of ownership or beneficial  
2 interest in a trust or other entity that owns such policy if the trust  
3 or other entity was formed or availed of for the principal purpose  
4 of acquiring one or more life insurance contracts, which life  
5 insurance contract is owned by a person residing in this state.

6 (1) A “life settlement contract” includes a premium finance loan  
7 made for a policy on or before the date of issuance of the policy  
8 where one or more of the following conditions apply:

9 (A) The loan proceeds are not used solely to pay premiums for  
10 the policy and any costs or expenses incurred by the lender or the  
11 borrower in connection with the financing.

12 (B) The owner receives on the date of the premium finance loan  
13 a guarantee of the future life settlement value of the policy.

14 (C) The owner agrees on the date of the premium finance loan  
15 to sell the policy or any portion of the policy’s death benefit on  
16 any date following the issuance of the policy, not including an  
17 agreement to sell the policy in the event of a default, provided that  
18 the default is not pursuant to an agreement or understanding with  
19 any other person for the purpose of evading regulation under this  
20 act.

21 (2) “Life settlement contract” does not include any of the  
22 following:

23 (A) A policy loan by a life insurance company pursuant to the  
24 terms of the life insurance policy or accelerated death provisions  
25 contained in the life insurance policy, whether issued with the  
26 original policy or as a rider.

27 (B) A premium finance loan, as defined herein, or any loan  
28 made by a bank or other licensed financial institution, provided  
29 that neither default on the loan nor the transfer of the policy in  
30 connection with the default is pursuant to an agreement or  
31 understanding with any other person for the purpose of evading  
32 regulation under this act.

33 (C) A collateral assignment of a life insurance policy by an  
34 owner.

35 (D) A loan made by a lender that does not violate Article 5.8  
36 (commencing with Section 778) of Chapter 1 of Part 2, provided  
37 the loan is not described in paragraph (1), and is not otherwise  
38 within the definition of life settlement contract.

39 (E) An agreement where all of the parties satisfy one of the  
40 following conditions:



1 (i) They are closely related to the insured by blood or law.  
2 (ii) They have a lawful substantial economic interest in the  
3 continued life, health, and bodily safety of the person insured.

4 (iii) They are trusts established primarily for the benefit of those  
5 parties.

6 (F) Any designation, consent, or agreement by an insured who  
7 is an employee of an employer in connection with the purchase  
8 by the employer, or by a trust established by the employer of life  
9 insurance on the life of the employee.

10 (G) A bona fide business succession planning arrangement:

11 (i) Between one or more shareholders in a corporation or  
12 between a corporation and one or more of its shareholders or one  
13 or more ~~trust~~ trusts established by its shareholders.

14 (ii) Between one or more partners in a partnership or between  
15 a partnership and one or more of its partners or one or more ~~trust~~  
16 trusts established by its partners.

17 (iii) Between one or more members in a limited liability  
18 company or between a limited liability company and one or more  
19 of its members or one or more trusts established by its members.

20 (H) An agreement entered into by a service recipient, or a trust  
21 established by the service recipient, and a service provider, or a  
22 trust established by the service provider, who performs significant  
23 services for the service recipient's trade or business.

24 (I) Any other contract, transaction, or arrangement from the  
25 definition of "life settlement contract" that the commissioner  
26 determines is not of the type intended to be regulated by this act.

27 (l) "Net death benefit" means the amount of the life insurance  
28 policy or certificate to be settled less any outstanding debts or  
29 liens.

30 (m) "Owner" means the owner of a life insurance policy or a  
31 certificate holder under a group policy, with or without a terminal  
32 illness, who enters or seeks to enter into a life settlement contract.  
33 For the purposes of this article, an owner shall not be limited to  
34 an owner of a life insurance policy or a certificate holder under a  
35 group policy that insures the life of an individual with a terminal  
36 illness or condition except where specifically addressed. The term  
37 "owner" does not include any of the following:

38 (1) Any provider or other licensee under this act.

39 (2) A qualified institutional buyer as defined in Rule 144A of  
40 the federal Securities Act of 1933, as amended.

- 1 (3) A financing entity.  
2 (4) A special purpose entity.  
3 (5) A related provider trust.  
4 (n) "Patient identifying information" means an insured's address,  
5 telephone number, facsimile number, electronic mail address,  
6 photograph or likeness, employer, employment status, social  
7 security number, or any other information that is likely to lead to  
8 the identification of the insured.  
9 (o) "Person" means any natural person or legal entity, including,  
10 but not limited to, a partnership, limited liability company,  
11 association, trust, or corporation.  
12 (p) "Policy" means an individual or group policy, group  
13 certificate, contract, or arrangement of life insurance owned by a  
14 resident of this state, regardless of whether delivered or issued for  
15 delivery in this state.  
16 (q) "Premium finance loan" is a loan made primarily for the  
17 purpose of making premium payments on a life insurance policy,  
18 which loan is secured by an interest in such life insurance policy.  
19 (r) "Provider" means a person, other than an owner, who enters  
20 into or effectuates a life settlement contract with an owner. A  
21 provider does not include any of the following:  
22 (1) Any bank, savings bank, savings and loan association, or  
23 credit union.  
24 (2) A licensed lending institution or creditor or secured party  
25 pursuant to a premium finance loan agreement which takes an  
26 assignment of a life insurance policy or certificate issued pursuant  
27 to a group life insurance policy as collateral for a loan.  
28 (3) The insurer of a life insurance policy or rider to the extent  
29 of providing accelerated death benefits or riders or cash surrender  
30 value.  
31 (4) A purchaser.  
32 (5) Any authorized or eligible insurer that provides stop loss  
33 coverage to a provider, purchaser, financing entity, special purpose  
34 entity, or related provider trust.  
35 (6) A financing entity.  
36 (7) A related provider trust.  
37 (8) A broker.  
38 (9) An accredited investor or qualified institutional buyer as  
39 defined respectively in Regulation D, Rule 501 or Rule 144A of

1 the federal Securities Act of 1933, as amended, who purchases a  
2 life settlement policy from a provider.

3 (s) “Purchaser” means a person who pays compensation or  
4 anything of value as consideration for a beneficial interest in a  
5 trust which is vested with, or for the assignment, transfer, or sale  
6 of, an ownership or other interest in a life insurance policy or a  
7 certificate issued pursuant to a group life insurance policy which  
8 has been the subject of a life settlement contract.

9 (t) “Related provider trust” means a titling trust or other trust  
10 established by a licensed provider or a financing entity for the sole  
11 purpose of holding the ownership or beneficial interest in purchased  
12 policies in connection with a financing transaction. In order to  
13 qualify as a related provider trust, the trust must have a written  
14 agreement with the licensed provider under which the licensed  
15 provider is responsible for ensuring compliance with all statutory  
16 and regulatory requirements and under which the trust agrees to  
17 make all records and files relating to life settlement transactions  
18 available to the Department of Insurance as if those records and  
19 files were maintained directly by the licensed provider.

20 (u) “Settled policy” means a life insurance policy or certificate  
21 that has been acquired by a provider pursuant to a life settlement  
22 contract.

23 (v) “Special purpose entity” means a corporation, partnership,  
24 trust, limited liability company, or other legal entity whose  
25 securities pay a fixed rate of return commensurate with established  
26 asset-backed capital markets, or has been formed solely to provide  
27 either directly or indirectly access to institutional capital markets:

28 (1) For a financing entity or provider.

29 (2) In connection with a transaction in which the securities in  
30 the special purpose entity are acquired by the owner or by a  
31 “qualified institutional buyer” as defined in Rule 144 promulgated  
32 under the federal Securities Act of 1933, as amended.

33 (w) “Stranger-originated life insurance” or “STOLI” is an act,  
34 practice, or arrangement to initiate the issuance of a life insurance  
35 policy in this state for the benefit of a third-party investor who, at  
36 the time of policy origination, has no insurable interest, under the  
37 laws of this state, in the life of the insured. STOLI practices  
38 include, but are not limited to, cases in which life insurance is  
39 purchased with resources or guarantees from or through a person  
40 or entity, that, at the time of policy inception, could not lawfully

1 initiate the policy himself, herself, or itself, and where, at the time  
2 of inception, there is an arrangement or agreement, to directly or  
3 indirectly transfer the ownership of the policy or the policy benefits  
4 to a third party. Trusts that are created to give the appearance of  
5 insurable interest and that are used to initiate policies for investors  
6 violate insurable interest laws and the prohibition against wagering  
7 on life. STOLI arrangements do not include otherwise lawful life  
8 settlement contracts as permitted by the act that added this section  
9 or those practices set forth in paragraph (2) of subdivision (k).

10 (x) “Terminally ill” means having an illness or sickness that  
11 can reasonably be expected to result in death in 24 months or less.

12 SEC. 4. Section 10113.2 of the Insurance Code is repealed.

13 SEC. 5. Section 10113.2 is added to the Insurance Code, to  
14 read:

15 10113.2. (a) This section applies to any person entering into,  
16 brokering, or soliciting life settlements pursuant to this section and  
17 Sections 10113.1 and 10113.3.

18 (b) (1) Except as provided in subparagraph (B), no person may  
19 enter into, broker, or solicit life settlements pursuant to Section  
20 10113.1 unless that person has been licensed by the commissioner  
21 under this section. The person shall file an application for a license  
22 in the form prescribed by the commissioner, and the application  
23 shall be accompanied by a fee established by the commissioner.  
24 The license fees for a provider license shall be reasonable, and the  
25 license and renewal fees for a broker shall not exceed the license  
26 and renewal fees established for an insurance producer who is  
27 acting as a life settlement broker. The applicant shall provide any  
28 information the commissioner may require. The commissioner  
29 may issue a license, or deny the application if, in his or her  
30 discretion, it is determined that it is contrary to the interests of the  
31 public to issue a license to the applicant. The reasons for a denial  
32 shall be set forth in writing.

33 (A) An individual acting as a broker under this section shall  
34 complete at least 15 hours of continuing education related to life  
35 settlements and life settlement transactions, as required and  
36 approved by the commissioner, prior to operating as a broker. This  
37 requirement shall not apply to a life insurance producer who  
38 qualifies under subparagraph (D).

39 (B) A person licensed as an attorney, certified public accountant,  
40 or financial planner accredited by a nationally recognized

1 accreditation agency, who is retained to represent the owner, and  
2 whose compensation is not paid directly or indirectly by the  
3 provider or purchaser, may negotiate a life settlement contract on  
4 behalf of the owner without having to obtain a license as a broker.

5 (C) A person licensed to act as a viatical settlement broker or  
6 provider as of December 31, 2009, shall be deemed qualified for  
7 licensure as a life settlement broker or provider, and shall be subject  
8 to all the provisions of this article as if the person were originally  
9 licensed as a life settlement broker or provider.

10 (D) (i) A life insurance producer who has been duly licensed  
11 as a life agent for at least one year or as a licensed nonresident  
12 producer in this state for one year shall be deemed to meet the  
13 licensing requirements of this section and shall be permitted to  
14 operate as a broker.

15 (ii) Not later than 10 days from the first day of operating as a  
16 broker, the life insurance producer shall notify the commissioner  
17 that he or she is acting as a broker, on a form prescribed by the  
18 commissioner, and shall pay any applicable fee to be determined  
19 by the commissioner. Notification shall include an acknowledgment  
20 by the life insurance producer that he or she will operate as a broker  
21 in accordance with this act.

22 (iii) The insurer that issued the policy that is the subject of a  
23 life settlement contract shall not be responsible for any act or  
24 omission of a broker or provider arising out of, or in connection  
25 with, the life settlement transaction, unless the insurer receives  
26 compensation for the replacement of the life settlement contract  
27 for the provider or broker.

28 (E) The commissioner shall review the examination for the  
29 licensing of life insurance agents and may recommend any changes  
30 to the examination to the department's curriculum committee in  
31 order to carry out the purposes of this section and Sections 10113.1  
32 and 10113.3.

33 (2) Whenever it appears to the commissioner that it is contrary  
34 to the interests of the public for a person licensed pursuant to this  
35 section to continue to transact life settlements business, he or she  
36 shall issue a notice to the licensee stating the reasons therefor. If,  
37 after a hearing, the commissioner concludes that it is contrary to  
38 the interests of the public for the licensee to continue to transact  
39 life settlements business, he or she may revoke the person's license,  
40 or issue an order suspending the license for a period as determined

1 by the commissioner. Any hearing conducted pursuant to this  
2 paragraph shall be in accordance with Chapter 5 (commencing  
3 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
4 Government Code, except that the hearing may be conducted by  
5 administrative law judges chosen pursuant to Section 11502 or  
6 appointed by the commissioner, and the commissioner shall have  
7 the powers granted therein.

8 (3) Each licensee shall owe and pay in advance to the  
9 commissioner an annual renewal fee of one hundred seventy-seven  
10 dollars (\$177). This fee shall be for annual periods commencing  
11 on July 1 of each year and ending on June 30 of each year, and  
12 shall be due on each March 1 and shall be delinquent on and after  
13 each April 1.

14 (4) Any licensee that intends to discontinue transacting life  
15 settlements in this state shall so notify the commissioner, and shall  
16 surrender its license.

17 (c) A life settlements licensee shall file with the department a  
18 copy of all life settlement forms used in this state. No licensee may  
19 use any life settlement form in this state unless it has been provided  
20 in advance to the commissioner. The commissioner may disapprove  
21 a life settlement form if, in his or her discretion, the form, or  
22 provisions contained therein, are contrary to the interests of the  
23 public, or otherwise misleading or unfair to the consumer. In the  
24 case of disapproval, the licensee may, within 15 days of notice of  
25 the disapproval, request a hearing before the commissioner or his  
26 or her designee, and the hearing shall be held within 30 days of  
27 the request.

28 (d) Life settlements licensees shall be required to provide any  
29 applicant for a life settlement contract, at the time of application  
30 for the life settlement contract, all of the following disclosures in  
31 writing and signed by the owner, in at least 12-point type:

32 (1) That there are possible alternatives to life settlements,  
33 including, but not limited to, accelerated benefits options that may  
34 be offered by the life insurer.

35 (2) The fact that some or all of the proceeds of a life settlement  
36 may be taxable and that assistance should be sought from a  
37 professional tax adviser.

38 (3) Consequences for interruption of public assistance as  
39 provided by information provided by the State Department of

1 Health Care Services and the State Department of Social Services  
2 under Section 11022 of the Welfare and Institutions Code.

3 (4) That the proceeds from a life settlement could be subject to  
4 the claims of creditors.

5 (5) That entering into a life settlement contract may cause other  
6 rights or benefits, including conversion rights and waiver of  
7 premium benefits that may exist under the policy or certificate of  
8 a group policy to be forfeited by the owner and that assistance  
9 should be sought from a professional financial adviser.

10 (6) That a change in ownership of the settled policy could limit  
11 the insured's ability to purchase insurance in the future on the  
12 insured's life because there is a limit to how much coverage  
13 insurers will issue on one life.

14 (7) That the owner has a right to rescind a life settlement contract  
15 within 30 days of the date it is executed by all parties and the owner  
16 has received all required disclosures, or 15 days from receipt by  
17 the owner of the proceeds of the settlement, whichever is sooner.  
18 Rescission, if exercised by the owner, is effective only if both  
19 notice of rescission is given and the owner repays all proceeds and  
20 any premiums, loans, and loan interest paid on account of the  
21 provider within the rescission period. If the insured dies during  
22 the rescission period, the contract shall be deemed to have been  
23 rescinded subject to repayment by the owner or the owner's estate  
24 of all proceeds and any premiums, loans, and loan interest to the  
25 provider.

26 (8) That proceeds will be sent to the owner within three business  
27 days after the provider has received the insurer or group  
28 administrator's acknowledgment that ownership of the policy or  
29 the interest in the certificate has been transferred and the  
30 beneficiary has been designated in accordance with the terms of  
31 the life settlement contract.

32 (9) The date by which the funds will be available to the owner  
33 and the transmitter of the funds.

34 (10) The disclosure document shall include the following  
35 language:

36  
37 "All medical, financial, or personal information solicited or  
38 obtained by a provider or broker about an insured, including  
39 the insured's identity or the identity of family members, a  
40 spouse, or a significant other may be disclosed as necessary

1 to effect the life settlement contract between the owner and  
2 provider. If you are asked to provide this information, you will  
3 be asked to consent to the disclosure. The information may be  
4 provided to someone who buys the policy or provides funds  
5 for the purchase. You may be asked to renew your permission  
6 to share information every two years.”

7  
8 (11) That the insured may be contacted by either the provider  
9 or the broker or its authorized representative for the purpose of  
10 determining the insured’s health status or to verify the insured’s  
11 address. This contact is limited to once every three months if the  
12 insured has a life expectancy of more than one year, and no more  
13 than once per month if the insured has a life expectancy of one  
14 year or less.

15 (12) Any affiliations or contractual relations between the  
16 provider and the broker, and the affiliation, if any, between the  
17 provider and the issuer of the policy to be settled.

18 (13) That a broker represents exclusively the owner, and not  
19 the insurer or the provider or any other person, and owes a fiduciary  
20 duty to the owner, including a duty to act according to the owner’s  
21 instructions and in the best interest of the owner.

22 (14) The name, business address, and telephone number of the  
23 broker.

24 (e) The broker shall provide the owner and the insured with at  
25 least all of the following disclosures in writing prior to the signing  
26 of the life settlement contract by all parties. The disclosures shall  
27 be clearly displayed in the life settlement contract or in a separate  
28 document signed by the owner:

29 (1) The name, business address, and telephone number of the  
30 broker.

31 (2) A full, complete, and accurate description of all of the offers,  
32 counteroffers, acceptances, and rejections relating to the proposed  
33 life settlement contract.

34 (3) A disclosure of any affiliations or contractual arrangements  
35 between the broker and any person making an offer in connection  
36 with the proposed life settlement contract.

37 (4) A complete reconciliation of the gross offer or bid by the  
38 provider to the net amount of proceeds or value to be received by  
39 the owner. For the purpose of this section, gross offer or bid shall  
40 mean the total amount or value offered by the provider for the



1 purchase of one or more life insurance policies, inclusive of  
2 commissions and fees.

3 (5) All estimates of the life expectancy of the insured which are  
4 obtained by the licensee in connection with the life settlement,  
5 unless such disclosure would violate any California or federal  
6 privacy laws.

7 (6) The commissioner may consider any failure to provide the  
8 disclosures or rights described in this section as a basis for  
9 suspending or revoking a broker's or provider's license pursuant  
10 to paragraph (2) of subdivision (b).

11 (f) All medical information solicited or obtained by any person  
12 soliciting or entering into a life settlement is subject to Article 6.6  
13 (commencing with Section 791) of Chapter 1 of Part 2 of Division  
14 1, concerning confidentiality of medical information.

15 (g) Except as otherwise allowed or required by law, a provider,  
16 broker, insurance company, insurance producer, information  
17 bureau, rating agency, or company, or any other person with actual  
18 knowledge of an insured's identity; shall not disclose the identity  
19 of an insured or information that there is a reasonable basis to  
20 believe that could be used to identify the insured or the insured's  
21 financial or medical information to any other person unless the  
22 disclosure is one of the following:

23 (1) It is necessary to effect a life settlement contract between  
24 the owner and a provider and the owner and insured have provided  
25 prior written consent to the disclosure.

26 (2) It is necessary to effectuate the sale of life settlement  
27 contracts, or interests therein, as investments, provided the sale is  
28 conducted in accordance with applicable state and federal securities  
29 law and provided further that the owner and the insured have both  
30 provided prior written consent to the disclosure.

31 (3) It is provided in response to an investigation or examination  
32 by the commissioner or any other governmental officer or agency  
33 or any other provision of law.

34 (4) It is a term or condition to the transfer of a policy by one  
35 provider to another provider, in which case the receiving provider  
36 shall be required to comply with the confidentiality requirements  
37 of Article 6.6 (commencing with Section 791) of Chapter 1 of Part  
38 2 of Division 1.

39 (5) It is necessary to allow the provider or broker or their  
40 authorized representatives to make contacts for the purpose of

1 determining health status. For the purposes of this section, the term  
2 “authorized representative” shall not include any person who has  
3 or may have any financial interest in the settlement contract other  
4 than a provider, licensed broker; further, a provider or broker shall  
5 require its authorized representative to agree in writing to adhere  
6 to the privacy provisions of this act.

7 (6) It is required to purchase stop loss coverage.

8 (h) In addition to other questions an insurance carrier may  
9 lawfully pose to a life insurance applicant, insurance carriers may  
10 inquire in the application for insurance whether the proposed owner  
11 intends to pay premiums with the assistance of financing from a  
12 lender that will use the policy as collateral to support the financing.

13 (1) If the premium finance loan provides funds which can be  
14 used for a purpose other than paying for the premiums, costs, and  
15 expenses associated with obtaining and maintaining the life  
16 insurance policy and loan, the application may be rejected as a  
17 prohibited practice under this act.

18 (2) ~~If the financing does not violate paragraph (1) or violate the~~  
19 ~~insurer’s lawful underwriting guidelines, the insurer may not reject~~  
20 ~~a life insurance application solely because the premiums will be~~  
21 ~~financed~~ (1), *the existence of premium financing may not be the*  
22 *sole criterion employed by an insurer in a decision whether to*  
23 *reject an application for life insurance.* The insurance carrier may  
24 make disclosures to the applicant, either on the application or an  
25 amendment to the application to be completed no later than the  
26 delivery of the policy, including, but not limited to, the following:  
27

28 “If you have entered into a loan arrangement where the  
29 policy is used as collateral, and the policy changes ownership  
30 at some point in the future in satisfaction of the loan, the  
31 following may be true:

32 “(A) A change of ownership could lead to a stranger owning  
33 an interest in the insured’s life.

34 “(B) A change of ownership could in the future limit your  
35 ability to purchase insurance on the insured’s life because  
36 there is a limit to how much coverage insurers will issue on a  
37 life.

38 “(C) You should consult a professional adviser since a  
39 change in ownership in satisfaction of the loan may result in

1 tax consequences to the owner, depending on the structure of  
2 the loan.”

3  
4 (3) In addition to the disclosures in paragraph (2), the insurance  
5 carrier may require the following certifications from the applicant  
6 or the insured:

7  
8 “(A) I have not entered into any agreement or arrangement  
9 under which I have agreed to make a future sale of this life  
10 insurance policy.

11 “(B) My loan arrangement for this policy provides funds  
12 sufficient to pay for some or all of the premiums, costs, and  
13 expenses associated with obtaining and maintaining my life  
14 insurance policy, but I have not entered into any agreement  
15 by which I am to receive consideration in exchange for  
16 procuring this policy.

17 “(C) The borrower has an insurable interest in the insured.”

18  
19 (i) Life insurers shall provide individual life insurance  
20 policyholders with a statement informing them that if they are  
21 considering making changes in the status of their policy, they  
22 should consult with a licensed insurance or financial advisor. The  
23 statement may accompany or be included in notices or mailings  
24 otherwise provided to the policyholders.

25 (j) The commissioner may adopt rules and regulations  
26 reasonably necessary to govern life settlement transactions.

27 (k) The commissioner may, whenever he or she deems it  
28 reasonably necessary to protect the interests of the public, examine  
29 the business and affairs of any licensee or applicant for a license.  
30 The commissioner shall have the authority to order any licensee  
31 or applicant to produce any records, books, files, or other  
32 information as is reasonably necessary to ascertain whether or not  
33 the licensee or applicant is acting or has acted in violation of the  
34 law or otherwise contrary to the interests of the public. The  
35 expenses incurred in conducting any examination shall be paid by  
36 the licensee or applicant.

37 (l) The commissioner may investigate the conduct of any  
38 licensee, its officers, employees, agents, or any other person  
39 involved in the business of the licensee, or any applicant for a  
40 license, whenever the commissioner has reason to believe that the

1 licensee or applicant for a license may have acted, or may be acting,  
2 in violation of the law, or otherwise contrary to the interests of the  
3 public. The commissioner may initiate an investigation on his or  
4 her own, or upon a complaint filed by any other person.

5 (m) The commissioner may issue orders to licensees whenever  
6 he or she determines that it is reasonably necessary to ensure or  
7 obtain compliance with this section, or Section 10113.3. This  
8 authority includes, but is not limited to, orders directing a licensee  
9 to cease and desist in any practice that is in violation of this section,  
10 or Section 10113.3, or otherwise contrary to the interests of the  
11 public. Any licensee to which an order pursuant to this subdivision  
12 is issued may, within 15 days of receipt of that order, request a  
13 hearing at which the licensee may challenge the order.

14 (n) The commissioner may, after notice and a hearing at which  
15 it is determined that a licensee has violated this section or Section  
16 10113.3 or any order issued pursuant to this section, order the  
17 licensee to pay a monetary penalty of up to ten thousand dollars  
18 (\$10,000), which may be recovered in a civil action. Any hearing  
19 conducted pursuant to this subdivision shall be in accordance with  
20 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
21 3 of Title 2 of the Government Code, except that the hearing may  
22 be conducted by administrative law judges chosen pursuant to  
23 Section 11502 or appointed by the commissioner, and the  
24 commissioner shall have the powers granted therein.

25 (o) Each licensed provider shall file with the commissioner on  
26 or before March 1 of each year an annual statement in the form  
27 prescribed by the commissioner. The information that the  
28 commissioner may require in the annual statement shall include,  
29 but not be limited to, the total number, aggregate face amount, and  
30 life settlement proceeds of policies settled during the immediately  
31 preceding calendar year, together with a breakdown of the  
32 information by policy issue year. The annual statement shall also  
33 include the names of the insurance companies whose policies have  
34 been settled and the brokers that have settled those policies, and  
35 that information shall be received in confidence within the meaning  
36 of subdivision (d) of Section 6254 of the Government Code and  
37 exempt from disclosure pursuant to the Public Records Act  
38 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
39 Title 1 of the Government Code). The annual statement shall not  
40 include individual transaction data regarding the business of life

1 settlements or information that there is a reasonable basis to believe  
2 could be used to identify the owner or the insured.

3 (p) No person who is not a resident of California may receive  
4 or maintain a license unless a written designation of an agent for  
5 service of process is filed and maintained with the commissioner.  
6 The provisions of Article 3 (commencing with Section 1600) of  
7 Chapter 4 of Part 2 shall apply to life settlements licensees as if  
8 they were foreign insurers, their license a certificate of authority,  
9 and the life settlements a policy, and the commissioner may modify  
10 the agreement set forth in Section 1604 accordingly.

11 (q) No person licensed pursuant to this section shall engage in  
12 any false or misleading advertising, solicitation, or practice. In no  
13 case shall a broker or provider, directly or indirectly, market,  
14 advertise, solicit, or otherwise promote the purchase of a new  
15 policy for the sole purpose of or with a primary emphasis on  
16 settling the policy or use the words “free,” “no cost,” or words of  
17 similar import in the marketing, advertising, soliciting, or otherwise  
18 promoting of the purchase of a policy. The provisions of Article  
19 6 (commencing with Section 780) and Article 6.5 (commencing  
20 with Section 790) of Chapter 1 of Part 2 shall apply to life  
21 settlements licensees as if they were insurers, their license a  
22 certificate of authority or producer’s license, and the life  
23 settlements a policy, and the commissioner shall liberally construe  
24 these provisions so as to protect the interests of the public.

25 (r) Any person who enters into a life settlement with a life  
26 settlements licensee shall have the absolute right to rescind the  
27 settlement within 30 days of the date it is executed by all parties  
28 and the owner has received all required disclosures, or 15 days  
29 from receipt by the owner of the proceeds of the settlement,  
30 whichever is sooner, and any waiver or settlement language  
31 contrary to this subdivision shall be void. Rescission, if exercised  
32 by the owner, is effective only if both notice of rescission is given  
33 and the owner repays all proceeds and any premiums, loans, and  
34 loan interest paid on account of the provider within the rescission  
35 period. If the insured dies during the rescission period, the contract  
36 shall be deemed to have been rescinded subject to repayment by  
37 the owner or the owner’s estate of all proceeds and any premiums,  
38 loans, and loan interest to the provider.

39 (s) Records of all consummated transactions and life settlement  
40 contracts shall be maintained by the provider for three years after

1 the death of the insured and shall be available to the commissioner  
2 for inspection during reasonable business hours.

3 (t) A violation of this section is a misdemeanor.

4 SEC. 6. Section 10113.3 is added to the Insurance Code, to  
5 read:

6 10113.3. (a) A provider entering into a life settlement contract  
7 with any owner of a policy, wherein the insured is terminally ill,  
8 shall first obtain the following:

9 (1) If the owner is the insured, a written statement from a  
10 licensed attending physician that the owner is of sound mind and  
11 under no constraint or undue influence to enter into a settlement  
12 contract.

13 (2) A document in which the insured consents to the release of  
14 his or her medical records to a provider, settlement broker, or  
15 insurance producer and, if the policy was issued less than two years  
16 from the date of application for a settlement contract, to the  
17 insurance company that issued the policy.

18 (b) The insurer shall respond to a request for verification of  
19 coverage submitted by a provider, settlement broker, or life  
20 insurance producer not later than 30 calendar days of the date the  
21 request is received. The request for verification of coverage must  
22 be made on a form approved by the commissioner. The insurer  
23 shall complete and issue the verification of coverage or indicate  
24 in which respects it is unable to respond. In its response, the insurer  
25 shall indicate whether, based on the medical evidence and  
26 documents provided, the insurer intends to pursue an investigation  
27 at this time regarding the validity of the insurance contract.

28 (c) Before or at the time of execution of the settlement contract,  
29 the provider shall obtain a witnessed document in which the owner  
30 consents to the settlement contract, represents that the owner has  
31 a full and complete understanding of the settlement contract and  
32 a full and complete understanding of the benefits of the policy,  
33 acknowledges that the owner is entering into the settlement contract  
34 freely and voluntarily, and, for persons with a terminal illness or  
35 condition, acknowledges that the insured has a terminal illness and  
36 that the terminal illness or condition was diagnosed after the policy  
37 was issued.

38 (d) The insurer shall not unreasonably delay effecting change  
39 of ownership or beneficiary with any life settlement contract  
40 lawfully entered into in this state or with a resident of this state.

1 (e) If a settlement broker or life insurance producer performs  
2 any of these activities required of the provider, the provider is  
3 deemed to have fulfilled the requirements of this section.

4 (f) If a broker performs those verification of coverage activities  
5 required of the provider, the provider is deemed to have fulfilled  
6 the requirements of this section.

7 (g) Within 20 days after an owner executes the life settlement  
8 contract, the provider shall give written notice to the insurer that  
9 issued that insurance policy that the policy has become subject to  
10 a life settlement contract. The notice shall be accompanied by the  
11 documents required by subdivision (g) of Section 10113.2.

12 (h) All medical information solicited or obtained by any licensee  
13 shall be subject to the applicable provision of state law relating to  
14 confidentiality of medical information, if not otherwise provided  
15 in this act.

16 (i) All life settlement contracts entered into in this state shall  
17 provide that the owner may rescind the contract on or before 30  
18 days after the date it is executed by all parties thereto, and the  
19 owner has received all required disclosures, or 15 days from receipt  
20 by the owner of the full payment of the proceeds as specified  
21 below, whichever is sooner. Rescission, if exercised by the owner,  
22 is effective only if both notice of the rescission is given, and the  
23 owner repays all proceeds and any premiums, loans, and loan  
24 interest paid on account of the provider within the rescission period.  
25 If the insured dies during the rescission period, the contract shall  
26 be deemed to have been rescinded subject to repayment by the  
27 owner or the owner's estate of all proceeds and any premiums,  
28 loans, and loan interest to the provider.

29 (j) Within three business days after receipt from the owner of  
30 documents to effect the transfer of the insurance policy, the  
31 provider shall pay the proceeds of the settlement to an escrow or  
32 trust account managed by a trustee or escrow agent in a state or  
33 federally chartered financial institution pending acknowledgment  
34 of the transfer by the issuer of the policy. The trustee or escrow  
35 agent shall be required to transfer the proceeds due to the owner  
36 within three business days of acknowledgment of the transfer from  
37 the insurer.

38 (k) Failure to tender the life settlement contract proceeds to the  
39 owner by the date disclosed to the owner renders the contract  
40 voidable by the owner for lack of consideration until the time the

1 proceeds are tendered to and accepted by the owner. A failure to  
2 give written notice of the right of rescission hereunder shall toll  
3 the right of rescission until 30 days after the written notice of the  
4 right of rescission has been given.

5 (l) Any fee paid by a provider, party, individual, or an owner  
6 to a broker in exchange for services provided to the owner  
7 pertaining to a life settlement contract shall be computed as a  
8 percentage of the offer obtained, not the face value of the policy.  
9 Nothing in this section shall be construed as prohibiting a broker  
10 from reducing the broker's fee below this percentage if the broker  
11 so chooses.

12 (m) No person at any time prior to, or at the time of, the  
13 application for, or issuance of, a policy, or during a two-year period  
14 commencing with the date of issuance of the policy, shall enter  
15 into a life settlement regardless of the date the compensation is to  
16 be provided and regardless of the date the assignment, transfer,  
17 sale, devise, bequest, or surrender of the policy is to occur.

18 (1) This prohibition shall not apply if the owner certifies to the  
19 provider that the policy was issued upon the owner's exercise of  
20 conversion rights arising out of a group or individual policy,  
21 provided the total of the time covered under the conversion policy  
22 plus the time covered under the prior policy is at least 24 months.  
23 The time covered under a group policy must be calculated without  
24 regard to a change in insurance carriers, provided the coverage  
25 has been continuous and under the same group sponsorship.

26 (2) This prohibition shall not apply if the owner submits  
27 independent evidence to the provider that one or more of the  
28 following conditions have been met within the two-year period:

29 (A) The owner or insured is terminally ill.

30 (B) The owner or insured disposes of his or her ownership  
31 interests in a closely held corporation, pursuant to the terms of a  
32 buyout or other similar agreement in effect at the time the insurance  
33 policy was initially issued.

34 (C) The owner's spouse dies.

35 (D) The owner divorces his or her spouse.

36 (E) The owner retires from full-time employment.

37 (F) The owner becomes physically or mentally disabled and a  
38 physician determines that the disability prevents the owner from  
39 maintaining full-time employment.



1 (G) A final order, judgment, or decree is entered by a court of  
2 competent jurisdiction, on the application of a creditor of the  
3 owner, adjudicating the owner bankrupt or insolvent, or approving  
4 a petition seeking reorganization of the owner or appointing a  
5 receiver, trustee, or liquidator to all or a substantial part of the  
6 owner's assets.

7 (3) (A) Copies of the independent evidence required by  
8 paragraph (2) shall be submitted to the insurer when the provider  
9 submits a request to the insurer for verification of coverage. The  
10 copies shall be accompanied by a letter of attestation from the  
11 provider that the copies are true and correct copies of the  
12 documents received by the provider. Nothing in this section shall  
13 prohibit an insurer from exercising its right to contest the validity  
14 of any policy.

15 (B) If the provider submits to the insurer a copy of independent  
16 evidence provided for in subparagraph (A) of paragraph (2) when  
17 the provider submits a request to the insurer to effect the transfer  
18 of the policy to the provider, the copy shall be deemed to establish  
19 that the settlement contract satisfies the requirements of this  
20 section.

21 (4) This prohibition shall apply only to policies issued on or  
22 after the effective date of this section.

23 (n) An insurer shall not:

24 (1) Engage in any transaction, act, or practice that restricts,  
25 limits, or impairs the lawful transfer of ownership, change of  
26 beneficiary, or assignment of a policy.

27 (2) Make any false or misleading statement for the purpose of  
28 dissuading an owner or insured from a lawful life settlement  
29 contract.

30 (o) No person providing premium financing shall receive any  
31 proceeds, fees, or other consideration from the policy or owner of  
32 the policy that are in addition to the amounts required to pay  
33 principal, interest, and any reasonable costs or expenses incurred  
34 by the lender or borrower in connection with the premium finance  
35 agreement, except for the event of a default, unless either the  
36 default on the loan or transfer of the policy occurs pursuant to an  
37 agreement or understanding with any other person for the purpose  
38 of evading regulation under this act.

39 (p) If there is more than one owner on a single policy, and the  
40 owners are residents of different states, the life settlement contract

1 shall be governed by the law of the state in which the owner having  
2 the largest percentage ownership resides or, if the owners hold  
3 equal ownership, the state of residence of one owner agreed upon  
4 in writing by all of the owners. The law of the state of the insured  
5 shall govern in the event that equal owners fail to agree in writing  
6 upon a state of residence for jurisdictional purposes.

7 (q) A provider from this state who enters into a life settlement  
8 contract with an owner who is a resident of another state that has  
9 enacted statutes or adopted regulations governing life settlement  
10 contracts shall be governed in the effectuation of that life settlement  
11 contract by the statutes and regulations of the owner's state of  
12 residence. If the state in which the owner is a resident has not  
13 enacted statutes or regulations governing life settlement contracts,  
14 the provider shall give the owner notice that neither state regulates  
15 the transaction upon which he or she is entering. For transactions  
16 in those states, however, the provider is to maintain all records  
17 required if the transactions were executed in the state of residence.  
18 The forms used in those states need not be approved by the  
19 department.

20 (r) If there is a conflict in the laws that apply to an owner and  
21 a purchaser in any individual transaction, the laws of the state that  
22 apply to the owner shall take precedence and the provider shall  
23 comply with those laws.

24 (s) It is a fraudulent life settlement act and a violation of this  
25 section for any person to do any of the following, or any of the  
26 acts listed in subdivision (g) of Section 10113.1:

27 (1) Enter into a life settlement contract if a person knows or  
28 reasonably should have known that the life insurance policy was  
29 obtained by means of a false, deceptive, or misleading application  
30 for the policy.

31 (2) Engage in any transaction, practice, or course of business if  
32 a person knows or reasonably should have known that the intent  
33 was to avoid the notice requirements of this section.

34 (3) Engage in any fraudulent act or practice in connection with  
35 any transaction relating to any settlement involving an owner who  
36 is a resident of this state.

37 (4) Fail to provide the disclosures or file the required reports  
38 with the commissioner as required by this act.

1 (5) Issue, solicit, or market, the purchase of a new life insurance  
2 policy for the purpose of, or with a primary emphasis on, settling  
3 the policy.

4 (6) Enter into a premium finance agreement with any person or  
5 agency, or any person affiliated with a person or agency that is  
6 prohibited under subdivision (o).

7 (7) With respect to any settlement contract or insurance policy  
8 and a broker, knowingly solicit an offer from, effectuate a life  
9 settlement contract with, or make a sale to any provider, financing  
10 entity, or related provider trust that is controlling, controlled by,  
11 or under common control with a broker, unless the relationship  
12 has been fully disclosed to the owner.

13 (8) With respect to any life settlement contract or insurance  
14 policy and a provider, knowingly enter into a life settlement  
15 contract with an owner, if, in connection with a life settlement  
16 contract, anything of value will be paid to a broker that is  
17 controlling, controlled by, or under common control with a provider  
18 or the financing entity, or related provider trust that is involved in  
19 a settlement contract, unless the relationship has been fully  
20 disclosed to the owner.

21 (9) With respect to a provider, enter into a life settlement  
22 contract unless the life settlement promotional, advertising, and  
23 marketing materials, as may be prescribed by regulation, have  
24 been filed with the commissioner. In no event shall any marketing  
25 materials expressly reference that the insurance is “free” for any  
26 period of time. The inclusion of any reference in the marketing  
27 materials that would cause an owner to reasonably believe that the  
28 insurance is free for any period of time shall be considered a  
29 violation of this act; or with respect to any life insurance producer,  
30 insurance company, broker, or provider make any statement or  
31 representation to the applicant or policyholder in connection with  
32 the sale or financing of a life insurance policy to the effect that the  
33 insurance is free or without cost to the policyholder for any period  
34 of time unless provided in the policy.

35 (t) Life settlement contracts and applications for life settlement  
36 contracts, regardless of the form of transmission, shall contain the  
37 following statement or a substantially similar statement:  
38

1 “Any person who knowingly presents false information in an  
2 application for insurance or for a life settlement contract may  
3 be subject to criminal or civil liability.”  
4

5 (1) The lack of a statement as required by this subdivision does  
6 not constitute a defense in any prosecution for a fraudulent life  
7 settlement act.

8 (2) This act shall not:

9 (A) Preempt the authority or relieve the duty of other law  
10 enforcement or regulatory agencies to investigate, examine, and  
11 prosecute suspected violations of law.

12 (B) Preempt, supersede, or limit any provision of any state  
13 securities law or any rule, order, or notice issued thereunder.

14 (C) Prevent or prohibit a person from disclosing voluntarily  
15 information concerning life settlement fraud to a law enforcement  
16 or regulatory agency other than the insurance department.

17 (D) Limit the powers granted elsewhere by the laws of this state  
18 to the commissioner or an insurance fraud unit to investigate and  
19 examine possible violations of law and to take appropriate action  
20 against wrongdoers.

21 (u) A provider lawfully transacting business in this state prior  
22 to the effective date of this act may continue to do so, pending  
23 approval or disapproval of that person’s application for a license  
24 as long as the application is filed with the commissioner not later  
25 than 30 days after publication by the commissioner of an  
26 application form and instructions for licensure of providers. If the  
27 publication of the application form and instructions is prior to the  
28 effective date of this chapter, then the filing of the application shall  
29 not be later than 30 days after the effective date of this act. During  
30 the time that an application is pending with the commissioner, the  
31 applicant may use any form of life settlement contract that has  
32 been filed with the commissioner pending approval thereof,  
33 provided that the form is otherwise in compliance with the  
34 provisions of this act. Any person transacting business in this state  
35 under this provision shall be obligated to comply with all other  
36 requirements of this act. A person who has lawfully acted as a  
37 broker and negotiated life settlement contracts between any owner  
38 residing in this state and one or more providers for at least one  
39 year immediately prior to the effective date of this act may continue  
40 to do so pending approval or disapproval of that person’s

1 application for a license, as long as the application is filed with  
2 the commissioner not later than 30 days after publication by the  
3 commissioner of an application form and instructions for licensure  
4 of brokers. If the publication of the application form and  
5 instructions is prior to the effective date of this chapter, then the  
6 filing of the application shall not be later than 30 days after the  
7 effective date of this act. Any person transacting business in this  
8 state under this provision shall be obligated to comply with all  
9 other requirements of this act.

10 SEC. 7. Section 10113.35 is added to the Insurance Code, to  
11 read:

12 10113.35. (a) For the purposes of Chapter 3.5 (commencing  
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
14 Government Code, including Section 11349.6 of the Government  
15 Code, the adoption or amendment of the regulations required to  
16 be adopted pursuant to this article is an emergency and shall be  
17 considered by the Office of Administrative Law as necessary for  
18 the immediate preservation of the public peace, health and safety  
19 and general welfare.

20 (b) Notwithstanding Chapter 3.5 (commencing with Section  
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
22 any emergency regulations adopted or amended by the state board  
23 pursuant to this article shall be filed with, but not be repealed by,  
24 the Office of Administrative Law and shall remain in effect until  
25 repealed by the department.

26 SEC. 8. Except as provided for in paragraph (4) of subdivision  
27 (m) of Section 10113.3, this act shall not apply to any life  
28 settlement contract entered into on or before July 1, 2010. This act  
29 shall apply to any transaction involving any life insurance policy  
30 in effect, or entered into, on or after the operative date of this act.

31 SEC. 9. The Legislature finds and declares that Section 5 of  
32 this act, which adds Section 10113.2 to the Insurance Code,  
33 imposes a limitation on the public's right of access to the meetings  
34 of public bodies or the writings of public officials and agencies  
35 within the meaning of Section 3 of Article I of the California  
36 Constitution. Pursuant to that constitutional provision, the  
37 Legislature makes the following findings to demonstrate the interest  
38 protected by this limitation and the need for protecting that interest:

39 (a) There is a compelling interest in adequately regulating the  
40 life settlement industry to protect consumers.

1 (b) That interest is promoted by encouraging the life settlement  
2 industry to make full and thorough disclosure of information to  
3 the commissioner by providing confidentiality for that information  
4 as specified in subdivision (o) of Section 10113.2 of the Insurance  
5 Code.

6 SEC. 10. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.